

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEVIN DARNELL WASHINGTON,

Defendant-Appellant.

UNPUBLISHED

April 27, 2010

No. 287091

Muskegon Circuit Court

LC No. 07-055092-FC

Before: OWENS, P.J., and SAWYER and O'CONNELL, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to murder, MCL 750.83; possession of firearm by felon, MCL 750.224f; and two counts of possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced as an habitual offender, third offense, MCL 769.11, to 562 to 1,080 months' imprisonment for the assault conviction, 80 to 120 months' imprisonment for the felon-in-possession conviction, and two years' imprisonment for each felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant's sole allegation of error on appeal is that the trial court improperly admitted other-acts evidence, which demonstrated that defendant attempted to hire a hit man to kill one of the witnesses for the prosecution, as well as a prosecutor. We review the admission of evidence for an abuse of discretion. *People v Johnson*, 474 Mich 96, 99; 712 NW2d 703 (2006).

Generally, "evidence of other crimes, wrongs, or acts of an individual is inadmissible to prove a propensity to commit such acts." *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). However, the testimonial evidence adduced at trial that defendant allegedly solicited for the murder of one of the prosecution witnesses, as well as one of the prosecutors, was admissible as evidence of consciousness of guilt. *People v Sholl*, 453 Mich 730, 740; 556 NW2d 851 (1996) (a threat by a defendant against a witness is generally admissible to demonstrate consciousness of guilt). In *People v Mock*, 108 Mich App 384, 389; 310 NW2d 390 (1981), this Court observed:

Defendant's argument that testimony as to his attempts to induce the complainant to drop the charges was erroneously admitted is also without merit. Defendant's analysis of the admissibility of such testimony as evidence of similar acts is inapplicable because the evidence was not admitted as evidence of similar

acts. Instead, *it was admitted under the long-standing case-law doctrine that evidence of a defendant's subsequent efforts to influence or coerce the witnesses against him is admissible where such activity demonstrates the consciousness of guilt on the part of the defendant.* [Emphasis added.]

See also *People v Kelly*, 231 Mich App 627, 640; 588 NW2d 480 (1998) (“Evidence of a defendant’s threat against a witness is generally admissible as conduct that can demonstrate consciousness of guilt.”). The challenged evidence is logically relevant to the determination that defendant was guilty of the charged offenses, and it “does not involve the intermediate inference of character;” thus, MRE 404(b) is not implicated. *People v VanderVliet*, 444 Mich 52, 64; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). Further, there is no indication that the jury gave this evidence undue or preemptive weight, or that the evidence confused the jury. *People v Mills*, 450 Mich 61, 75-76; 537 NW2d 909 (1995), modified on other grounds 450 Mich 1212 (1995). The probative value of the challenged evidence related to defendant’s guilt was not substantially outweighed by the danger of unfair prejudice. *Id.* at 67. Ultimately, it was for the jury to determine whether the testimony was credible and to determine the significance of the solicitation along with the other evidence presented. *Sholl*, 453 Mich at 740.

The trial court admitted the challenged evidence under the *res gestae* exception, as well as pursuant to MRE 404(b), as an alternate basis, as identity evidence. Even though based on the wrong reason, a decision of a trial court that reached the correct result will be affirmed on appeal. *People v Bauder*, 269 Mich App 174, 187; 712 NW2d 506 (2005). The evidence was admissible and there was no error requiring reversal.

Affirmed.

/s/ Donald S. Owens
/s/ David H. Sawyer
/s/ Peter D. O’Connell